S.B.CIVIL MISC. APPEAL NO.458/2004
Smt. Chunni Devi and others vs. Bhagga Ram

DATE OF ORDER ::: 24.4.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.BV Thanvi, for the appellant.

Mr. NK Rai, for the respondent.

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Heard learned counsel for the parties.

The appellant is aggrieved against the order of the first appellate court dated 31.1.2004 by which it, after holding that the trial court itself permitted the respondent to produce the expert opinion and the expert in the trial court appeared on 22.4.2000, prepared the report on the same day and produced the report on the same day i.e. 22.4.2000 itself clearly shows that the said report was submitted in abrupt hot haste, therefore, the first appellate court observed that as per Section 73 of the Evidence Act, the trial court has not acted in a proper manner as the trial court did not obtain the expert report despite its order.

Learned counsel for the appellants submits that the expert was produced by the respondent himself and he produced the evidence which was not accepted by the trial court, therefore, the second expert cannot be appointed. It is also submitted that other sufficient evidence was available on record to decide the appeal, therefore, the

court should not have remanded the matter back to the trial court.

I have considered the submissions of learned counsel for the appellant and perused the reasons given by the first appellate court and also perused the facts.

It appears that the trial court itself found that the expert opinion is necessary for deciding the suit, therefore, allowed the respondent's application for getting the opinion of expert for disputed thumb impression. Expert Sampat Raj came in the Court on 22.4.2000, examined the thumb impression and prepared and produced the report on the same day. The first appellate court rightly observed that such an abrupt decision of the expert is no decision at all and, therefore, a fresh expert opinion is required. Looking to the reasons given by the first appellate court in paras no.9(a) and (b), this Court is also of the opinion that in this case, the first appellate court was fully justified in setting aside the judgment and decree dated 1.3.2001 and remanded the matter to the trial court for deciding the matter afresh after obtaining the expert opinion from the Forensic Science Laboratory.

In view of the above, I do not find any merit in this appeal and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya